

REMARKS

Claims 1-15 and 17-20 are pending and stand rejected. At the outset, Applicants note that claims 1-20 are again incorrectly listed as pending in the present Office Action. Claim 16 was cancelled in the Amendment and Response filed on July 21, 2003. Acknowledgement is respectfully requested.

Rejection Pursuant to 35 U.S.C. §102

Claims 1, 3-8, 10, 12, and 14-20 are rejected pursuant to 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/01833800 of Schmidt et al. (Schmidt). The Examiner argues that Schmidt teaches a delivery system with a delivery pump, a delivery conduit connected to the pump, a sensor implantable within a subject, and a control unit in communication with the sensor and the pump and effective to receive a sensor output signal and communicate a delivery signal to the pump to deliver a drug at a rate and for a duration effective to achieve a desired biochemical parameter within a predetermined range. The Examiner cites paragraphs 0081 and 0088 of Schmidt as teaching a control unit that compiles and communicates the data.

Applicants enclose a Rule 131 Declaration of Alan J. Dextradeur, which establishes that the invention claimed in the present application was completed in the United States before the January 25, 2002 filing date of the Schmidt application, and even before the May 30, 2001 priority date that Schmidt can potentially claim for some of its subject matter. Applicants note that the Schmidt application is a Continuation-in-Part of U.S. Patent Application No. 09/870,097 (now U.S. Patent No. 6,650,942), filed on May 30, 2001. However, the parent application does not disclose the subject matter relied on by the Examiner to reject the pending claims in the present application, and thus the earliest relevant date for the Schmidt application is its filing date of January 25, 2002. Regardless, the Schmidt application is not available as prior art and therefore withdrawal of the pending rejection is respectfully requested.

Rejection Pursuant to 35 U.S.C. §103


Claims 1, 2, 9, 11, 13-15, and 17-20 are also rejected pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,340,588 of Nova et al. (Nova) in view of Schmidt. As noted above, Schmidt is not available as prior art, thereby obviating the basis for the Examiner's rejection. Reconsideration and withdrawal is respectfully requested.

Conclusion

In view of the amendments and remarks above, Applicants submit that claims 1-15 and 17-20 are in condition for allowance. In the event that the above amendments and remarks are not deemed to place this case in condition for allowance, an opportunity to interview with the Examiner is requested. Applicants encourage the Examiner to telephone the undersigned upon receipt of this response to discuss any issues that may remain.

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Respectfully submitted,



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